

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

BRANDON LEE WILLIAMS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No: 2:17-cv-805-WKW-WC
)	
THE CITY OF MONTGOMERY, <i>et al.</i> ,)	
)	
Defendants.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

Before the court is Plaintiff's Motion for Voluntary Dismissal (Doc. 20), in which Plaintiff seeks an order dismissing the unserved Defendant Blake F. Hicks from this action. On June 14, 2018, the District Judge entered an Order (Doc. 23) referring this matter to the undersigned United States Magistrate Judge "for further proceedings and determination or recommendation as may be appropriate." Plaintiff cites Rule 41(a) of the Federal Rules of Civil Procedure in his motion for voluntary dismissal of Defendant Hicks. Doc. 20 at 1. Pursuant to Rule 41(a)(1)(A)(i) & (ii), of the Federal Rules of Civil Procedure, a plaintiff may voluntarily dismiss an action against a defendant, without a court order, provided that the defendant has not filed an answer or a motion for summary judgment, or if the affected parties submit a stipulation of dismissal. Outside of those circumstances, a plaintiff may dismiss her action against a defendant "only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). In this case, because of his deployment with the United States Marine Corps, Defendant Hicks has not been served with the Complaint, and, therefore, has not filed an answer or motion for summary judgment in response

thereto. As Plaintiff wishes to dismiss Defendant Hicks from this action and proceed against the remaining Defendants, and Defendant Hicks has not appeared or otherwise answered Plaintiff's Complaint, Plaintiff's motion is due to be granted.

Accordingly, the undersigned Magistrate Judge hereby RECOMMENDS that Plaintiff's Motion for Voluntary Dismissal (Doc. 20) be GRANTED and that all claims presented in Plaintiff's Complaint against Defendant Blake F. Hicks be DISMISSED without prejudice and that Defendant Hicks be DISMISSED from this action. The undersigned further RECOMMENDS that this matter be referred back to the undersigned Magistrate Judge for further proceedings or recommendation as may be appropriate.

It is further ORDERED that the parties are DIRECTED to file any objections to the said Recommendation on or before **June 29, 2018**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive, or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982); *see Stein v. Reynolds Sec., Inc.*, 667 F.2d 33 (11th Cir. 1982); *see also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (*en banc*) (adopting as binding precedent

all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981).

DONE this 15th day of June, 2018.

/s/ Wallace Capel, Jr.

CHIEF UNITED STATES MAGISTRATE JUDGE